

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 421 of 2006.

Decided on : October 10, 2006.

Dhani Ram

.....Appellant.

VERSUS

The Trust Prabhu Dayal Shah and Moti Ram
Shah at Kangra through its Secretary & ors.

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. G.D. Verma, Sr. Advocate with
Mr. B.C.Verma, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents- plaintiffs, the Trust Prabhudayal Shah Moti Ram Shah through its Secretary and Smt. Shanno Devi, filed a suit for possession of certain property, alleging that the present appellant and proforma respondent, had forcibly taken possession of their property immediately after the execution of an earlier decree for possession of the same property, which was passed in favour of the plaintiffs- respondents and against the appellant and proforma respondent.

Whether the reporters of the local papers may be allowed to see the Judgment?

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3. Suit was contested by the appellant and proforma respondent. It was denied by them that they had forcibly taken the possession of the suit land. They claimed that they were tenants on the land. In the alternative, they pleaded that they had acquired title by prescription. Some preliminary issues were also raised. The trial court decreed the suit with the finding that the respondents- plaintiffs were the owners and that they had been dispossessed after the execution of a decree for possession passed in their favour in an earlier suit. Appeal filed by the appellant stands dismissed by the District Judge.

4. Learned counsel for the appellant has raised two contentions. His first contention is that Smt. Shanno Devi respondent-plaintiff had no locus- standi to file the suit on behalf of the Trust. On a query by the court, the learned counsel admits that in the earlier suit that was filed for possession of this very property against the appellant and proforma respondent, Smt. Shanno Devi was a plaintiff and that the Trust was also represented by said Smt. Shanno Devi. In view of this admitted position, the contention cannot be upheld.

5. The next contention raised by the learned counsel is that the present suit is barred by rule of res judicata, because a similar suit had been filed by the respondents- plaintiffs earlier and the issues involved in that suit were the same as in the present suit and the subject matter of that suit was also the same, as that of the present suit. This contention is also without merit. The two courts below have returned the finding that the decree passed in favour of

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the respondents- plaintiffs in the earlier suit had been duly executed and the plaintiffs- respondents were put in possession of the suit land and it was thereafter that the plaintiffs- respondents were again forcibly ousted from the suit land by the appellant and the proforma respondent. This action of the defendants in ousting the plaintiffs- respondents from the suit land after the execution of the earlier decree gave a fresh cause of action to the plaintiffs- respondents, and therefore, the suit could not be said to be barred by the rule of res judicata.

6. Since no substantial question of law arises, the appeal is dismissed.

CMP No. 792 of 2006.

7. Infructuous.

October 10, 2006.
(Hem)

(Surjit Singh)
Judge.